



Citation: *The Estate of CS v Minister of Employment and Social Development*, 2025 SST 613

**Social Security Tribunal of Canada**  
**General Division – Income Security Section**

## **Decision**

**Appellant:** The Estate of C. S.  
**Representative:** Larry Maloney  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 12, 2024 (issued by  
Service Canada)

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**Tribunal member:** Jackie Laidlaw  
**Type of hearing:** Teleconference  
**Hearing date:** April 15, 2025  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** April 28, 2025  
**File number:** GP-24-1019

## Decision

[1] The appeal is allowed, in part.

[2] The Appellant, The Estate of C. S., is eligible for a Canada Pension Plan (CPP) disability pension as of August 2024. This decision explains why I am allowing the appeal.

## Overview

[3] The deceased contributor worked at X as a clerk from 2008 to 2019. She stopped working because of a workplace injury to her lower back. She applied for the CPP disability pension based on her lower back. The Appellant applied for a CPP disability pension on July 18, 2023. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[4] In April 2024, the deceased was diagnosed with terminal bowel and liver cancer. She applied for terminal illness under the CPP on September 25, 2024. Unfortunately, she died on October 3, 2024.

[5] The deceased contributor's husband attended the hearing as the representative for the Estate. He gave testimony as a witness.

[6] For the purposes of this decision, I will refer to the deceased contributor as the Appellant. I will refer to her husband as the witness.

[7] The Appellant's representative says the Appellant should be allowed an onset date of June 2019 due to her back pain, and eventually the cancer.

[8] The Minister says they agree the Appellant has been disabled because of her cancer as of April 2024 and benefits should be allowed with an onset date of April 2024. However, the Minister says the Appellant was not disabled because of her back pain.

## What the Appellant must prove

[9] For the appeal to succeed, the Appellant's representative must prove the Appellant had a disability that was severe and prolonged by December 31, 2024. This date is based on her CPP contributions.<sup>1 2</sup>

[10] The *Canada Pension Plan* defines "severe" and "prolonged."

[11] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup>

[12] This means I have to look at all of the Appellant's medical conditions together to see what effect they had on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or "real world" picture of whether her disability was severe. If the Appellant was capable regularly of doing some kind of work that she could have earned a living from, then her estate isn't entitled to a disability pension.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>4</sup>

[14] This means the Appellant's disability can't have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

[15] The Appellant's representative has to prove the Appellant's disability was severe and prolonged. He has to prove this on a balance of probabilities. This means he has to show it is more likely than not that she was disabled.

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<sup>1</sup> Service Canada uses an appellant's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on GD 2 pages 30 to 31.

<sup>2</sup> In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that the appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is "substantially gainful" if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## Reasons for my decision

[16] I find that the Appellant had a severe and prolonged disability as of April 2024. She continued to be disabled until she died on October 3, 2024. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

### Was the Appellant's disability severe?

[17] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

#### – The Appellant's functional limitations affected her ability to work

[18] The Appellant had:

- Mechanical low back pain.
- Metastasis bowel cancer.

[19] However, I can't focus on the Appellant's diagnoses.<sup>5</sup> Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.<sup>6</sup> When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.<sup>7</sup>

[20] I find that the Appellant had functional limitations that affected her ability to work.

#### – What the Appellant said about her functional limitations

[21] The Appellant said that her medical conditions resulted in functional limitations that affected her ability to work. In the Appellant's Notice of Appeal, dated June 11, 2024 before she realized her cancer was terminal. She noted she has the following:

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- An inability to consistently sustain any physical activity.
- A need for significant workplace accommodations.
- A lack of transferable employment skills resulting in an inability to obtain or regularly work at any type of gainful employment.

[22] The witness stated the Appellant had the following functional limitations since 2019:

- She could not do the laundry and he had to do it.
- She could not sweep the floor or do the dishes.
- She required help getting into the bathroom and into bed.

– **What the medical evidence says about the Appellant’s functional limitations and ability to work**

[23] The Appellant had to provide some medical evidence to support that her functional limitations affected her ability to work no later than December 31, 2024.<sup>8</sup>

○ **Back pain**

[24] All the medical reports indicate the Appellant had a workplace injury on April 16, 2019 and continued to work as a postal clerk until May 2019. She then received physiotherapy and attempted to return to work in October 2019 but could not. She saw orthopaedic surgeon Dr. Glennie in March 2020 who told her she was not a surgical candidate.

[25] The letter from Dr. Glennie dated March 11, 2020 confirmed the Appellant attempted to return to work four hours a day, apparently three months prior to the letter. The letter also confirmed she had difficulty getting into the shower and needed to sit down, along with significant pain while standing and with prolonged walking. Dr. Glennie

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<sup>8</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

indicated his review of the 2019 CT scan and MRI of the lumbar spine showed a flattened disc at L2-3 and no sign of nerve root compression. Because of the lack of nerve root compression Dr. Glennie did not recommend surgery. The only specific recommendation was that she should look for an administrative type of job with a sit to stand desk.<sup>9</sup>

[26] The Transferable Skills Analysis performed on May 25, 2020 showed a capacity to work at a sedentary level and indicated suitable occupations were reception, administration, and clerical work.<sup>10</sup>

[27] The Appellant had a Functional Capacity Evaluation<sup>11</sup> (FCE) as part of an Executive Summary from CBI performed by physician Dr. Panais, kinesiologist Connie Reid, and clinical psychologist Norann Richard. The summary is dated August 10, 2020. This fulsome evaluation found the Appellant had mechanical low back pain. Her work tolerance was three to four hours a day, and it was based on her demonstrated ability to sit, stand and walk. Ms. Reid noted that this evaluation specifically provided an estimate of activity tolerance in a general work setting, and not just for her previous occupation at X. The Appellant was found to have the capacity to work at a sedentary level.

[28] Another FCE was performed by kinesiologist Will Kerr on March 15 and 16, 2021. The report is dated April 5, 2021 and was specific to her job at X.<sup>12</sup> Mr. Kerr found her workday tolerance to be three to four hours, as had the previous FCE. He noted she was unable to function in her job. However, she could do sedentary work with accommodations, which included varying sitting, standing, and walking as well as taking breaks and the use of an ergonomic chair.

[29] The Appellant's representative argued that if X could not accommodate three hours a day, no other employer would be able to. However, it was not that X could not provide work for three hours a day, or even the accommodations, it was that there were

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<sup>9</sup> See GD 2 pages 49 to 50.

<sup>10</sup> See GD 2-51.

<sup>11</sup> See GD 2 69.

<sup>12</sup> See GD 2-101.

no jobs available in her area that suited her limitations. This is clearly outlined in the Workplace Safety and Insurance Board decision to allow her full economic recovery. The Board found she had a 5% disability, and that the request for permanent accommodations was sent to X in May 2021, July 2021 and again September 2021. X informed her there were no positions available in her home area.<sup>13</sup> X was capable of offering a three-hour work day. There just wasn't an opening in her area for that job. As well, there are numerous jobs which are on a part-time, three-hour a day schedule.

[30] The Appellant's representative also argued that in order to offer these accommodations, she would need a benevolent employer.<sup>14</sup> I disagree. The accommodations that have been noted are quite conservative and would be available at a variety of sedentary jobs without undue hardship to the employer.

[31] The medical evidence supports that the Appellant's back pain prevented her from working at her previous job. The evidence also supports that she was capable of working at a sedentary job with her back pain.

[32] I find the evidence does not support a severe disability because of her back pain.

○ **Bowel Cancer**

[33] The Appellant developed symptoms of bowel cancer in early April 2024. She was hospitalized in June 2024. She was formally diagnosed with metastasis bowel cancer in September 2024. Unfortunately, she passed away October 3, 2024.

[34] The Minister agrees she would be disabled from all types of work as of April 2024. I agree. Given she went immediately to hospital, then palliative care once the cancer was found, it is unlikely she would have been able to work at any job.

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<sup>13</sup> See GD 2 109.

<sup>14</sup> *Atkinson v. Canada (Attorney General)*, [2014] F.C.J. No 840, 2014 FCA 187 states that a benevolent employer is someone who will vary the conditions of the job and modify their expectations of the employee in keeping with his limitations. The reduced ability to perform at a competitive level is accepted by the benevolent employer and the employee is incapable regularly of pursuing any work in a competitive workforce.

[35] There is no evidence to suggest she was suffering from any symptoms of bowel cancer prior to April 2024. Therefore, I agree that the bowel cancer was a severe disability as of April 2024.

[36] The medical evidence shows the bowel cancer was a severe disability which prevented the Appellant from working.

[37] I find the Appellant had a severe disability as of April 2024.

### **Was the Appellant's disability prolonged?**

[38] The Appellant's disability was prolonged.

[39] The Appellant's cancer symptoms began in April 2024 and continued until her death.<sup>15</sup>

[40] A disability is prolonged if it is likely to cause death.

[41] I find that the Appellant's disability was prolonged as of April 2024.

### **When payments start**

[42] The Appellant's disability became severe and prolonged in April 2024.

[43] There is a four-month waiting period before payments start.<sup>16</sup> This means that payments start as of August 2024. The estate is eligible for the pension from August 2024 until October 2024, the month of the Appellant's death.<sup>17</sup>

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<sup>15</sup> In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant has to show a severe and prolonged disability no later than the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>16</sup> Section 69 of the *Canada Pension Plan* sets out this rule.

<sup>17</sup> Section 70(1)(d) of the CPP.



## **Conclusion**

[44] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged.

[45] This means the appeal is allowed, in part.

Jackie Laidlaw

Member, General Division – Income Security Section